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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,661	03/09/2001	Victor Keith Blanco	MS1-770US	7533
22801	7590	05/02/2006	EXAMINER	
LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			NGUYEN, KIM T	
			ART UNIT	PAPER NUMBER
			3713	
DATE MAILED: 05/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/802,661	BLANCO, VICTOR KEITH	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kim T. Nguyen	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 February 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-11, 13-15, 17-20 and 45-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11, 13-15, 17-20 and 45-51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/7/05, 5/2/05, 7/28/05, 10/4/05, 2/4/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

Applicant's election of species 1, claims 11 and 15, in the reply on 2/14/06 is acknowledged. Currently, claims 12 and 16 have been canceled, claims 1-11, 13-15, 17-20 and 45-51 will be considered, and are pending in the application.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-11, 13 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano (U.S. patent No. 6,309,301) in view of Shih et al (provisional application 60/201,163).**

Claim 1: Sano discloses a game console comprising a memory coupled to a processor (Fig. 6; col. 5, line 67; and col. 6, lines 1-4); and a console application configured to allow selection of audio tracks (col. 13, lines 29-31). Sano does not explicitly disclose allowing a user to select audio tracks and creating a soundtrack. However, since Shih discloses allowing a user to incorporate user-personalized songs and sounds into a video game (page 1, last two paragraphs; page 3, first paragraph; page 5, lines 10-15), and since Shih discloses associating encoded tags to the sound file (page 1, last two paragraphs; page 3, lines 3-7 and 10-19; page 4, lines 1-2; and

page 6, lines 13-18), shih obviously encompasses allowing the user to select stored audio tracks and creating a soundtrack. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to configure the console application of Sano such that the console application of Sano is capable of allowing the user to select audio tracks and creating a soundtrack containing the selected audio tracks as taught by Shih in order to allow the user to incorporate the user preference songs into the game.

Claim 2 and 4-10: Sano discloses a hard disk drive (col. 11, line 23). Further, implementing a hard disk drive to a game console using a CD, DVD, game disc as a storage medium, retrieving audio data from an online source and storing soundtrack in a memory as a WMA file, and retrieving audio tracks from audio source would have been well known to a person of ordinary skill in the art at the time the invention was made. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement a well known hard disk drive to the game console of Sano in order to facilitate storing and retrieving data to the game console.

Claim 3: Sano discloses playing soundtracks through the game console (col. 8, lines 42-46).

Claims 11 and 13: Sano discloses associating the soundtrack with the game (col. 13, lines 29-31). Further, displaying a listing all available soundtracks for playback would have been well known.

Claim 45: Shih discloses associating a name with a created soundtrack (page 3, lines 15-16; and page 5, line 24).

**3. Claims 14-15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sano (U.S. patent No. 6,309,301) in view of Shih et al (provisional application 60/201,163) and Goodman et al (US patent No. 6,928,433).**

Claims 14 and 18: refer to discussion in claim 1 above. Further, Goodman discloses a first user interface for facilitate selection of audio tracks (col. 2, lines 60-62), and a second user interface to facilitate playback of soundtracks (col. 9, lines 21-23). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the first and the second user interface to the game console of Sano in order to allow the player to playback specific favorite soundtrack.

Claims 15 and 17: refer to discussion in claims 10-11 above.

Claims 19-20: refer to discussion in claim 13 above.

**4. Claims 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman et al (US patent No. 6,928,433).**

Claim 46: Goodman discloses a method comprises identifying stored audio tracks (col. 7, lines 26-28; and col. 8, lines 1-8 and 59-65); displaying a portion of the stored audio tracks to a user (col. 2, lines 57-60); receiving information regarding selected audio tracks and creating a soundtrack (col. 2, lines 60-62). Goodman does not explicitly disclose identifying stored audio tracks accessible by a game console. However, since Goodman discloses sound files can be transferred between the source

device and a game console (col. 11, lines 19-20 and 29-30), Goodman obviously encompasses accessing the audio tracks by a game console so that the game console can playback a specified soundtrack in order to incorporate specified songs into a video game.

Claims 47-48: Goodman discloses associating a name with the soundtrack and storing the soundtrack (col. 10, line 4; col. 9, lines 8-9; col. 1, lines 49-51; and col. 2, lines 60-62).

Claims 49-51, identifying audio tracks in the game console or identifying audio tracks from an online source or a plurality of audio sources would have been well known to a person of ordinary skill in the art at the time the invention was made.

***Response to Arguments***

5. Applicant's arguments filed 10/13/05 have been fully considered but they are not persuasive.

- a) In response to applicant's arguments in page 8 through page 13, lines 1-5, regarding to claims 1-11, 13 and 45, refer to the 35 USC 103(a) rejections above.
- b) Applicant's argument in page 13 through page 15, regarding to claims 14 and 46, are moot in view of the new ground of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is 571-272-

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4441. The examiner can normally be reached on Monday-Thursday during business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on 571-272-7147. The central official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

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Date: April 27, 2006



Kim Nguyen  
Primary Examiner  
Art Unit 3713